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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0610-CR-937
	)	
PAOLA DEMUCHA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Michael A. Morrissey, Judge
Cause No. 79D06-0507-CM-1114

January 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The State appeals the trial court's grant of Paola Demucha's ("Demucha") motion to suppress evidence, which effectively precluded the prosecution of Demucha for operating a vehicle while intoxicated as a Class A misdemeanor, operating a vehicle with a blood alcohol content greater than 0.15 percent as a Class A misdemeanor, and a minor in possession of alcohol as a Class C misdemeanor. We affirm.

Issue

The State raises the sole issue of whether the trial court erred in finding a lack of reasonable suspicion to detain Demucha and her vehicle.

Facts and Procedural History

On July 8, 2005, an employee of a McDonald's in Lafayette dialed 911 to report a possible intoxicated driver operating a small red passenger car. Based on this information, Sergeant Daniel McGrew ("Sergeant McGrew") and Officer Brian Phillips ("Officer Phillips") were dispatched to the McDonald's in separate squad cars. When the officers arrived, Demucha and her passenger were still in the vehicle at the second drive-up window. Without engaging their squad cars' lights or sirens, Sergeant McGrew and Officer Phillips parked and exited their cars and approached Demucha's vehicle. Prior to observing any signs of intoxication, Sergeant McGrew greeted Demucha, who was in the driver's seat, and asked her to turn off the vehicle and hand him her keys.

On July 21, 2005, the State charged Demucha with Operating a Vehicle While

Intoxicated as Class A misdemeanor,[1] Operating a Vehicle with a blood alcohol level of .15 or greater as a Class A misdemeanor,[2] and Minor in Possession of Alcoholic Beverages as a Class C misdemeanor.[3] On April 6, 2006, Demucha filed a motion to suppress asserting that her detention by the police was in violation of the federal and Indiana Constitutions' prohibition against unreasonable searches and seizures. After the hearing on May 1, 2006, the parties' attorneys were to schedule a time with the trial court to listen to the recording of the 911 call. The trial court issued its ruling on July 25, 2006, granting the motion to suppress, finding in part:

> [T]he initial phone call from the McDonald's employee failed to set forth a sufficient factual basis to raise reasonable suspicion that this Defendant was intoxicated. Thereafter, the arresting officer did not observe Defendant operate the subject motor vehicle. The arresting officer thereafter requested and was given possession of the keys to the motor vehicle, thereby detaining this Defendant without reasonable suspicion.

Appellant's Appendix at 19. The State now appeals.

Discussion and Decision

Initially, we note that Demucha has not filed an appellee's brief. When an appellee does not submit a brief, an appellant may prevail by making a prima facie case of error. State v. Augustine, 851 N.E.2d 1022 (Ind. Ct. App. 2006). In this context, prima facie is defined as "at first sight, on first appearance, or on the face of it." Id.

The State is appealing from a negative judgment because the trial court effectively granted a motion to suppress evidence seized without a warrant. State v. Lefevers, 844

[1] Ind. Code § 9-30-5-2.
[2] I.C. § 9-30-5-1.
[3] I.C. § 7.1-5-7-7.

N.E.2d 508, 512 (Ind. Ct. App. 2006), trans. denied. The State, therefore, must show that the trial court's ruling on the suppression motion was contrary to law. Id. We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id. We neither reweigh the evidence nor judge the credibility of witnesses and consider only the evidence most favorable to the judgment. Id. In the present case, the only evidence presented was the testimony of Sergeant McGrew and Officer Phillips; thus, there was no competing evidence to weigh.

The State concedes that Demucha was detained but argues that the information provided by the McDonald's employee, acting as a cooperative citizen informant, provided law enforcement with the requisite reasonable suspicion. An investigatory stop of a citizen by a police officer does not violate the Fourth Amendment rights of that individual where the officer has a reasonable articulable suspicion of criminal activity. State v. Ritter, 801 N.E.2d 689, 691 (Ind. Ct. App. 2004), trans. denied. Such reasonable suspicion is determined on a case-by-case basis, in light of the totality of the circumstances. Id. Similarly, under Article 1, Section 11 of the Indiana Constitution, a police stop and brief detention of a motorist is reasonable if the officer reasonably suspects that the motorist is engaged in, or is about to engage in, illegal activity. Id. Thus, the question to be decided is whether Sergeant McGrew and Officer Phillips had a reasonable suspicion to detain Demucha. Although the standard of review of a trial court's decision to admit evidence is whether there was an abuse of discretion, the determination of reasonable suspicion is reviewed *de novo*. Id. Reasonable suspicion entails some minimal level of objective justification for making a stop, something

more than an unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. Wilson v. State, 670 N.E.2d 27, 29 (Ind. Ct. App. 1996) (citing U.S. v. Sokolow, 490 U.S. 1, 7 (1989)). Even if the stop is justified, a reasonable suspicion only allows the officer to temporarily freeze the situation for inquiry and does not give him all the rights attendant to an arrest. Burkett v. State, 736 N.E.2d 304, 306 (Ind. Ct. App. 2000).

Crucial to our review of whether the information within the 911 call provided the requisite reasonable suspicion for the officers to detain Demucha is a recording or transcript of the call. Sergeant McGrew testified that he did not observe any indications that Demucha was intoxicated prior to asking for her keys. Therefore, the only possible source supporting a determination of reasonable suspicion is the 911 call. However, the State has failed to include the 911 call in the record as required by Indiana Appellate Rule 50(B)(1)(e).[4] The State's brief cites to "Disk" in support of the facts supposedly contained in the 911 call. However, we find no transcript or recording of the call in the materials submitted for appellate review. Without this portion of the record, the only relevant facts from the 911 call that we can glean from the hearing transcript is that an unidentified McDonald's employee called 911 to report a possible intoxicated driver operating a small red passenger vehicle. An anonymous telephone tip, absent any independent indicia of reliability or any officer-observed confirmation of the caller's prediction of the defendant's future behavior, is not enough to permit police to detain a citizen and subject him or her to a Terry stop.

Washington v. State, 740 N.E.2d 1241, 1246 (Ind. Ct. App. 2000), trans. denied. Based on the record provided, the State has failed to demonstrate that the trial court's ruling on the suppression motion was contrary to law.

Affirmed.

VAIDIK, J., and BARNES, J., concur.

[4] "The appellant's Appendix in a Criminal Appeal shall contain a table of contents and copies of the following documents, if they exist: . . . (e) any record material relied on in the brief unless the material is already included in the Transcript."